

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

THERESA MALONE, et. al;

Plaintiffs,

vs.

KANTNER INGREDIENTS, INC., et. al;

Defendants.

**4:12CV3190**

**MEMORANDUM AND ORDER**

A hearing was held today on the record on the following motions:

-- Plaintiffs' Motion for Sanctions, ([Filing No. 199](#)), along with Plaintiffs' Motion for Leave to File an Amended Index of Evidence in Support of Motion for Sanctions, ([Filing No. 241](#)).

-- Plaintiffs' Motion to Compel, ([Filing No. 219](#)).

-- Plaintiffs' Motion to Intervene and Issue Order to Show Cause and for Expedited Hearing, ([Filing No. 222](#)), along with Defendants' Motion for Leave to File a Surreply Brief in Opposition to Plaintiffs' Motion to Intervene ([Filing No. 239](#)), and Plaintiffs' Objection for Defendants Motion for Leave to File a Surreply Brief, ([Filing No. 240](#)).

-- Defendants' Motion to Strike Disclosure or Require Immediate Supplementation of Plaintiffs' Damage Disclosure, ([Filing No. 228](#)).

-- Plaintiffs' Motion for Modification of Scheduling Order, ([Filing No. 242](#)), Defendants' Motion to Modify Progression Schedule to Provide for Staggered Witness Disclosures, ([Filing No. 225](#)).

For the reasons stated on the record,

IT IS ORDERED:

- 1) Plaintiffs' motion for leave, ([Filing No. 241](#)), is granted, and the evidence attached to that motion was considered by the court in ruling on Plaintiffs' motion for sanctions.
- 2) Plaintiffs' motion for sanctions, ([Filing No. 199](#)), is denied, but without prejudice to reasserting before Judge Gerrard, either following or with the plaintiffs' anticipated motion for summary judgment on the issue of standing.
- 3) Plaintiffs' motion to compel, ([Filing No. 219](#)), is denied.
- 4) Defendants' oral motion to withdraw is granted, and defendants' motion to strike the plaintiffs' damage disclosure, ([Filing No. 228](#)), is withdrawn.
- 5) Plaintiffs' objection, ([Filing No. 240](#)), is denied; Defendants' motion for leave to submit a surreply, ([Filing No. 239](#)), is granted; and the brief and evidence submitted with Filing No. 239 will be reviewed by the court on Plaintiffs' motion to show cause.
- 6) An evidentiary hearing on Plaintiffs' motion to show cause, ([Filing No. 222](#)), will be held at 9:00 a.m. on March 20, 2015 before the undersigned magistrate judge in Courtroom 2, United States Courthouse and Federal Building, 100 Centennial Mall North, Lincoln, Nebraska.

- 7) As to the Plaintiffs' and the Defendants' motions to modify the scheduling order, ([Filing No. 242](#) and [Filing No. 225](#), respectively), the court amends the final progression order as follows:
- a. The non-jury trial of this case is set to commence before John M. Gerrard, United States District Judge, in Courtroom 1, United States Courthouse, Lincoln, Nebraska, at 9:00 a.m. on September 14, 2015, or as soon thereafter as the case may be called, for a duration of five (5) trial days. This case is subject to the prior trial of criminal cases and such other civil cases as may be scheduled for trial before this one.
  - b. The Pretrial Conference is scheduled to be held before the undersigned magistrate judge on September 1, 2015 at **2:00 p.m.**, and will be conducted by WebEx conferencing. To facilitate this conferencing method, the parties' proposed Pretrial Conference Order and Exhibit List(s) must be emailed to [zwart@ned.uscourts.gov](mailto:zwart@ned.uscourts.gov), in either Word Perfect or Word format, by 5:00 p.m. on August 28, 2015. An email will be sent to counsel of record with the instructions and codes for participating in the pretrial conference by WebEx.
  - c. The plaintiffs' expert witness disclosure deadline is unchanged, and the plaintiffs are not granted leave to serve a supplemental expert witness disclosure absent the showing required under [Sherman v. Winco Fireworks, Inc., 532 F.3d 709 \(8th Cir. 2008\)](#).
  - d. The defendants' deadline for complete expert disclosures for all experts expected to testify at trial, (both retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(B\)](#)), and non-retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(C\)](#)), is March 11, 2015.
  - e. The deposition deadline is April 30, 2015.
  - f. The deadline for filing motions to dismiss and motions for summary judgment as to the issue of Plaintiffs' standing to pursue this case is April 30, 2015. As to all other issues, the deadline for filing motions

to dismiss and motions for summary judgment is May 29, 2015.<sup>1</sup>

- g. The deadline for filing motions to exclude testimony on *Daubert* and related grounds is May 29, 2015.

February 23, 2015.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge

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<sup>1</sup> To facilitate the court's review, the parties are strongly encouraged to include hyperlinks to the evidence, CM/ECF record, and all legal authorities cited within their briefs filed in support of, or in opposition to, any motions filed. See NECivR [7.1](#). For instructions, see "Hyperlinking Information" at <http://www.ned.uscourts.gov/attorney/electronic-case-filing>.